(2020) 05 NCLT CK 0044

In the National Company Law Appellate Tribunal

Case No : Company Application (CAA) No. 136(PB) Of 2018

Western Impex Private Limited APPELLANT

Vs

Datavideo Technologies India Private Limited RESPONDENT

Date of Decision : 11-05-2020

Acts Referred:

National Company Law Tribunal Rules, 2016 — Rule 3(2), 14
Companies Act, 2013 — Section 230, 230(2), 231, 232

Citation : (2020) 05 NCLT CK 0044

Hon'ble Judges : B.S.V. Prakash Kumar, J;Narender Kumar Bhola, Member (Technical)

Bench : Division Bench

Advocate : Manoj Kumar Garg

Final Decision : Allowed

Judgement

B.S.V. Prakash Kumar, J

1. This is an application filled by the applicant Company under Section 230 to 232 and other applicable provision of the Companies Act, 2013 (for brevity "The Act") read with Companies (Compromises, Arrangements and Amalgamation) Rule, 2016 (for brevity "The Rules") in relation to the Scheme of amalgamation (for brevity the "The SCHEME") proposed between the Applicant Companies and their respective shareholders and creditors.

2. Affidavits in support of the application sworn for and on behalf of the Applicant Companies have been filed by Mr. Satish Kumar Aggarwal, being the respective authorized representative/Director of the Applicant Companies.

3. It is represented that the Scheme does not contemplate any corporate debt restructuring exercise as contemplated under Section 230 (2) of the Act. We have been taken through the averments made in the application as well as typed set of documents annexed there with. It is further represented that the application filled by the applicants is maintainable in view of the Rule 3(2) of the

Rules and it is also represented that the Registered office of the applicant Companies are situated within the territorial jurisdiction of this Tribunal and fall within the domain of Registrar of Companies, NCT of Delhi at New Delhi.

4. In relation to the applicant Company No. 1, it has been represented that the Company has 2 Equity Shareholders & 5 Unsecured Creditors. We are further apprised by way of affidavits that in relation to the Shareholders and Unsecured creditors, applicant Company seeks a direction for dispensing with holding of their meetings for the purpose of obtaining their approval of the proposed Scheme.

5. In relation to the applicant Company No. 2, it has been represented that the Company has 5 Equity Shareholders & 17 Unsecured Creditors. We are further apprised that the way of affidavits that in relation to the Shareholders and Unsecured creditors, applicant Company seeks a direction for dispensing with holding of their meetings for the purpose of obtaining their approval of the proposed Scheme.

6. The above application has been placed before us and this Tribunal proceeds to entertain the same. The Registered offices of the applicant Companies are situated within New Delhi which are subject to the Territorial Jurisdiction of Registrar of Companies, NCT of Delhi at New Delhi as well as of this Tribunal.

7. We have pursued the application and the connected documents filled along with the Scheme of amalgamation contemplated between the Companies.

8. WESTERN IMPEX PRIVATE LIMITED was incorporated under the Companies Act, 1956 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi. As on the date of the filling of this application, The Authorized Share Capital of the First Applicant/Transferor Company is Rs. 1,00,000/-(Rupees One Lac only) divided into 10,000 (Ten Thousand) Equity Shares of Rs. 10/- (Rupees Ten only) each. As on the date of filling this application, the issued, subscribed and paid up Share Capital of the First Applicant/Transferor Company is Rs. 1,00,000/-(Rupees One Lac only) divided into 10,000 (Ten Thousand) Equity Shares of Rs. 10/-(Rupees Ten only) each. Apart from the above, The First applicant has not issued any debentures and any other class of shares as on date.

9. DATAVIDEO TECHNOLOGIES INDIA PRIVATE Limited was incorporated under the Companies Act, 1956 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi. As on the date of the filling of this application, The Authorized Share Capital of the Second Applicant/Transferee Company is Rs. 12,00,00,000/- (Rupees Twelve Crores only) divided into 1,20,00,000 (One Crore Twenty Lacs) Equity Shares of Rs. 10/- (Rupees Ten only) each. As on the date of filling this application, the Issued, Subscribed and Paid up Share Capital of the First Applicant/Transfer Company is Rs. 11,88,34,650/- (Rupees Eleven Crore Eighty-Eight Lacs Thirty-Four Thousands and six Hundred Fifty only) divided into 1,18,83,465 (One Crore Eighteen Lacs Eighty Three Thousand and Four Hundred Sixty Five) Equity Shares of Rs. 10/- (Rupees Ten only) each. Apart from the

above, the second applicant has not issued any debentures and any other class of shares as on date.

A. In relation to the Applicant Company No. 1/Transferor Company

i) With Respect to the Shareholders:

It is represented by the applicant that all the Shareholders have already placed their consent-affidavits on record& transferor Company is 100 % Wholly Subsidiary Company of Transferee Company. Therefore, the necessity of convening and holding a meeting of Shareholders is obviated.

ii) With Respect to the Secured Creditors:

Since, It is represented by the applicant that there is no secured creditor in the Company, the necessity of convening and holding a meeting is obviated.

iii) With Respect to the Unsecured Creditors:

Since, It is represented by the applicant that there is 5 Unsecured creditor in the Company. It is represented by the applicant that all the 5 Unsecured Creditors have already placed their consent-affidavits on record. Therefore, the necessity of convening and holding a meeting is dispensed with. B. In relation to the Applicant Company No. 2/Transferee Company. (i) With Respect to the Shareholders:

It is represented by the applicant that all 5 Shareholders have already placed their consent-affidavits on record. The meeting of Shareholders of Transferee Company is directed to be held at the Registered office situated at 370-371/2, First Floor, Hospital Road, Jangpura, New Delhi -110014 on 27th June 2020 at 4.00 p.m.. The Quorum of the meeting shall be 4 in person.

(ii) With Respect to the Secured Creditors:

Since, it is represented by the applicant that there is no secured creditor in the Company, the necessity of convening and holding a meeting is obviated.

(iii) With Respect to the Unsecured Creditors:

It is represented by the applicant that all 17 Shareholders have already placed their consent-affidavits on record. The meeting of Shareholders of Transferee Company is directed to be held at the Registered office situated at 370-371/2, First Floor, Hospital Road, Jangpura, New Delhi - 110014 on 27th June 2020 at 12.00 noon. The Quorum of the meeting shall be 15 in Number in person.

C. Mr. Afnaan Siddiqui, Advocate (Mobile No. 9716406207) is appointed as the Chairperson, Ms. Roma Bedi, Advocate (Mobile No. 9958077975) is appointed as Alternate Chairman and Ms. Aditi Gupta, Practicing Company Secretary (Mobile No. 9871433338) as Scrutinizer for the meetings of the shareholders of the transferee Company in terms of the direction issued herein.

D. In case the quorum as noted above for the aforesaid meeting are not present at the meeting, then the meeting shall be adjourned by half an hour, thereafter the persons present and voting shall be deemed to constitute the quorum. The Chairperson and alternate Chairperson appointed herein along with the Scrutinizer shall ensure that the proxy Registers are properly maintained.

E. The Fees of the Chairperson for the aforesaid meetings shall be Rs. 60,000/-, The Fees of the Alternate Chairperson Shall be Rs. 55,000/- and the Fees of the Scrutinizer shall be Rs. 55,000/- in addition to meeting their incidental expenses. The Chairperson will file its report within a week from the date of holding of the aforesaid meeting. The fees of Chairperson, Alternate Chairperson and Scrutinizer along with the travelling expenses and other out of pocket expenses shall be borne by the Applicant Companies. A copy of this order shall be supplied to the learned counsels for the Applicant Companies who in turn shall supply copy of the same to the Chairperson, Alternate Chairperson and the Scrutinizer.

E. Individual notices shall be sent to the shareholders and creditors as above by the Applicant Companies through email or through registered post or speed post or courier services, as available considering the present circumstances due to the CoVID-19 pandemic and the consequent restrictions/lockdowns imposed by the Central and State Government, 30 days in advance before the scheduled date of meeting, indicating the day, date, the place fixed for and time of meeting as aforesaid, together with a copy of Scheme and copy of explanatory statement as required under the Companies Act, 2013 and the Rules, along with the proxy forms and any other documents as may be prescribed under the Act, be provided free of cost.

F. The Applicant Companies shall publish an advertisement at least 30 clear days before the aforesaid meetings, indicating the day, date and the place fixed and time of meetings as aforesaid, to be published in "Financial Express" (English) and "Jansatta" (Hindi), both Delhi NCR edition, with the option of publication in its electronic version considering the present circumstances due to the CoVID-19 pandemic and the consequent restrictions/lockdowns imposed by the Central and State Government. The Applicant Companies shall also publish the notice on their websites, if any. The notices and other documents (including the advertisement) shall also be sent to the Securities and Exchange Board of India and the stock exchanges by Applicant Company 1 for placing on their websites in accordance with applicable laws.

G. The Chairperson shall be responsible to report the results of the meetings to the Tribunal in Form No. CAA 4, as per Rule 14 of the Rules within 7 (seven) days of the conclusion of the meetings. The Chairperson shall be assisted by the authorized representative/Company Secretary of the Applicant Companies and the Scrutinizer, who will assist the Chairperson and Alternate Chairperson in preparing and finalizing the reports.

H. Voting Shall be allowed on the proposed Scheme by Voting in person, by proxy, through Postal ballot or through electronic means as may be applicable for the meeting of Shareholders of Transferee Company in terms of the provisions of the Companies Act, 2013 and Rules framed there under.

I. Notice of the application shall also be served on the, Regional Director, Northern Region, Ministry of Corporate affairs, B-2 Wing, 2nd Floor, Paryavaran Bhawan, CGO Complex, New Delhi-110003, Registrar of Companies, NCT of Delhi at 4th Floor, IFCI Tower, 61, Nehru Place, New Delhi-110019, the Official Liquidator, Lok Nayak Bhawan, 8th Floor, Khan Market, New Delhi-110001, the office of the Income Tax Department, Income Tax officer, Ward- 18 (3), Central Revenue Building, IP Estate, New Delhi-110002 and office of the Income Tax Department, Income Tax officer, Additional Commissioner of Income Tax, Special Range-4, Central Revenue Building, IP Estate, New Delhi-110002, the Notices to Income Tax authorities shall disclose sufficient details like PAN Card numbers, ward Numbers and assessing officers so that timely and proper reply may be filled.

J. The Applicant Companies further shall furnish a copy of the Scheme (together with the explanatory statement), free of charge, within 1 day of any requisition for the Scheme made by every creditor or member of the Applicant Companies entitled to attend the meetings as aforesaid.

K. The authorized representative of the Applicant Companies shall furnish affidavits stating that the directions of this Tribunal in relation to service of notice of meetings and publication of advertisement has been complied with at least one week before the proposed meetings.

L. All the aforesaid directions are to be complied with in accordance with the applicable law, including forms and formats contained in the Rules as well as the provisions of the Act by the Applicant Companies and as directed by this Tribunal.

The application stands allowed in the aforesaid terms. Let the copy of order be served to parties.